



Foreign Policy/National Security

## Foreign Bribes Bill Readied for Senate Action

Legislation that would outlaw bribery of foreign officials by U.S. corporations may provide an early comparison between President Ford's and Jimmy Carter's approach to a foreign policy issue that has an ethical dimension. The bill (S 3664), sponsored by Sen. William Proxmire (D Wis.), is scheduled for Senate floor action in late September.

Rejecting as unenforceable an outright prohibition of overseas bribes, the administration Aug. 8 submitted to Congress its own legislation (S 3741, HR 15149) that would require U.S. companies to notify the Secretary of Commerce of all major corporate payments made to secure foreign business.

On Aug. 9 Carter told a Ralph Nader-sponsored consumer activist group that the administration's bill, in effect, told U.S. corporations to "go ahead and bribe." On Aug. 19 Carter charged that the Ford bill "condoned" bribery by providing that overseas corporate payments would not be publicly disclosed until a year after they were reported to the Commerce Department.

But the day after Carter's first attack, Commerce Secretary Elliot L. Richardson reiterated the administration's contention that a ban on bribery could not be enforced. "Unenforceable standards," he added, "can themselves have a corrosive effect on society."

With adjournment less than six weeks away and House action nowhere in sight, the controversial Proxmire bill has very little chance of becoming law. But to voters mystified by nuclear strategy and bored by diplomacy's slow minuets, the bill may provide a case study of the proper balance of pragmatism and morality in the conduct of U.S. foreign policy.

While Carter campaigns for the re-establishment of U.S. moral authority in global affairs, Ford is likely to stress his practical experience with the everyday policy constraints in a complex world. Senate debate on S 3664 may invite, or compel, them to explain their positions at greater length.

### Background

In its probe of illegal corporate contributions to the 1972 Nixon presidential campaign, the Watergate special prosecution force uncovered several corporate political slush funds that were concealed from normal corporate accounting controls. The Securities and Exchange Commission (SEC) opened an independent probe of the funds on grounds that they represented a breakdown in the system of corporate accountability. The integrity of that system, the commission maintained, was essential to the right of investors to have accurate financial information on which to base a prudent investment decision about a company.

When the SEC probe revealed that some of the secret funds were being used for bribes or other questionable payments in connection with certain U.S. companies' overseas operations—and that these payments were not disclosed to stockholders—the commission warned that such

firms might be in violation of the federal securities laws by concealing from their investors information relevant to the financial well-being of the enterprise. The commission argued that, in their assessment of an investment risk, stockholders had a right to know when a significant portion of a firm's business was secured not by the competitive excellence of its product but by its largesse to foreign officials. Bribe-produced income, the SEC maintained, was susceptible to a significantly different risk than was income generated by market competition.

Threatening court action against firms that had concealed such payments from shareholders, the commission in July 1975 began to encourage corporations to "voluntarily" disclose past payments, suggesting that it would be more lenient on those corporate officials who came forward than on those who might later be found out. By May 12, 1976, the

*"Public discussion in this country of the alleged misdeeds of officials of foreign governments cannot fail to damage our relations with these governments."*

—Deputy Secretary of State  
Robert S. Ingersoll

*"When our enterprises stoop to bribery and kickbacks, they give substance to the Communist myth...that capitalism is fundamentally corrupt."*

—Former Under Secretary of State  
George W. Ball

date it reported on its investigation to the Senate Banking, Housing and Urban Affairs Committee, the SEC had uncovered, or was investigating, questionable overseas payments by 79 U.S. corporations. (Box, pp. 2334-2335)

On May 16, 1976, the Senate Foreign Relations Subcommittee on Multinational Corporations began the first large-scale congressional probe of the overseas payments problem. It warned, prophetically, that widespread bribery by U.S. corporations could trigger major political repercussions in other nations. On Aug. 1 Lockheed Aircraft, the Pentagon's largest contractor, acknowledged under pressure from the subcommittee and the SEC that since 1970 it had paid more than \$22-million to foreign officials and political organizations to promote business.

## SEC List of Corporate Payments Abroad

In a May 12 report to the Senate Banking, Housing and Urban Affairs Committee, the Securities and Exchange Commission identified 79 registered U.S. corporations that had admitted making, or been formally charged with making, overseas payments of questionable legality. The commission identified another 24 firms that might have made illegal domestic payments.

The principal sources of information for the report were voluntary disclosures by the corporations to the SEC. The commission emphasized that the payments reported showed "a tremendous variation in the types and amounts of payments and the attendant circumstances."

The report also summarized information on 14 cases in which the SEC had initiated legal action against firms for violations of the federal securities laws in connection with the questionable payments.

The commission emphasized that the report was based on publicly filed documents and not on its own independent investigation.

Of 103 companies named in the report, 63 were listed on *Fortune* magazine's list of the 1,000 largest U.S. industrial corporations for 1975. Several other firms, including utilities and service corporations, that were not ranked by the magazine as "industrials," reported to the SEC 1975 revenues larger than many of the industrial firms.

The report listed 35 firms that were major contractors to the Department of Defense, the National Aeronautics and Space Administration (NASA) or the Energy Research and Development Administration (ERDA) in fiscal 1975.

Following are the corporations identified by the SEC in its report:

Company	Questionable Overseas Payments (dates)	1975 Total Sales (in thousands)	1975 Company Rank (Fortune 1,000 list)	Fiscal 1975 Govt. Contracts (in thousands)	Fiscal 1975 Rank Among Contractors
Abbott Laboratories	\$ 680,000 (1973-35)	\$ 940,660	215	—	—
Allergan Pharmaceuticals	51,899 (1970-75)	25,396 <sup>2</sup>	—	—	—
American Cyanamid	1,200,000 (1971-75)	1,928,444	106	—	—
American Home Products	6,462,000 (1971-75)	2,258,642	89	—	—
American Standard	266,500 (1973-75)	1,622,262	129	—	—
AMF	1,500,000 (1971-75)	1,004,697	202	—	—
Ashland Oil	679,500 (1967-74)	3,637,126	45	44,354	100 DOD
Baxter Laboratories	2,160,220 (1970-75)	564,085	306	—	—
Boeing		3,718,853	43	1,560,827	2 DOD
Braniff Airways	940,000 —	598,856 <sup>2</sup>	—	46,169	9 NAS
Bristol-Myers	"some payments"	1,827,669	110	—	—
Burroughs	1,500,000 (1973-75)	1,675,646	124	—	—
Butler National	302,000 <sup>3</sup>	1,489 <sup>2</sup>	—	50,325	85 DOD
Carnation	1,261,000 (1968-76)	2,075,320	100	—	—
Carrier	2,614,000 (1972-75)	929,856	219	—	—
Castle & Cook	110,000 —	843,051	230	—	—
Cerro		599,169	293	—	—
Cities Service	645,000 (1973-75)	3,200,700	53	—	—
Coastal States Gas	8,000,000 —	1,315,265 <sup>2</sup>	—	49,149	87 DOD
Coherent Radiation	20,388 —	14,469 <sup>2</sup>	—	—	—
Colgate-Palmolive	865,000 (1971-75)	2,860,491	66	—	—
Cook United	6,163 <sup>3</sup> —	517,728	335	—	—
Core Laboratories	184,485 —	24,202 <sup>2</sup>	—	—	—
Del Monte		1,279,274	162	—	—
Dresser Industries	24,000 —	2,011,600	101	—	—
Electronic Associates	83,000 (1971-75)		—	—	—
Exxon	56,771,000 (1963-75)	44,864,824	1	330,329	19 DOD
Fairchild Industries		218,538	607	191,711	34 DOD
Gardner-Denver	96,200 (1971-76)	423,140	392	4,581	45 NASA
General Telephone & Electronics	13,257,483 (1971-75)	2,841,850 <sup>2</sup>	—	165,240	38 DOD
General Tire & Rubber	1,349,000 —	1,751,958	118	168,963	37 DOD
B. F. Goodrich	124,000 (1971-75)	1,901,202	107	—	—
Goodyear	846,000 (1970-75)	5,452,473	23	135,003	46 DOD
Gulf Oil	6,900,000 (1960-73)	14,268,000	8	83,006	2 ERDA
Honeywell	1,840,000 (1971-75)	2,760,068	67	78,531	71 DOD
				291,465	23 DOD
				8,116	33 NASA

Company	Questionable Overseas Payments (dates)	1975 Total Sales (in thousands)	1975 Company Rank (Fortune 1,000 list)	Fiscal 1975 Govt. Contracts (in thousands)	Fiscal 1975 Rank Among Contractors
Hospital Corp. of America	"some payments"	297,747 <sup>2</sup>	—	—	—
Intercontinental Diversified	329,320 (1970-72)	64,143 <sup>2</sup>	—	—	—
ITT	3,864,300 (1971-75)	11,367,647	11	233,397	30 DOD
Johnson & Johnson	1,002,300 (1971-75)	2,224,680	92	4,309	47 NASA
Koppers Co.	1,500,000 —	1,075,464	190	—	—
Kraftco	699,500 (1969-75)	4,857,378	33	—	—
Levi Strauss	75,000 (1974-75)	1,015,215	200	—	—
Lockheed Aircraft	25,000,000 <sup>5</sup> (1967-75)	3,387,211	50	2,080,303	1 DOD
McDonnell Douglas	2,500,000 (1971-76)	3,255,668	52	60,220	7 NASA
Merck & Co.	3,761,319 (1968-75)	1,489,658	139	1,397,939	4 DOD
Minnesota Mining and Manufacturing	52,000 (1975)	3,127,341	56	125,450	3 NASA
NCR	300,000 (1967-75)	2,165,607	96	—	—
Northrop	30,704,400 (1969-75)	988,123	205	—	—
Northwest Industries	582,000 (1973-75)	1,187,500	175	620,324	12 DOD
The Offshore Co.	169,000 —	133,400 <sup>2</sup>	—	16,961	19 NASA
Ogdon	2,415,000 (1970-75)	1,491,264	138	—	—
Otis Elevator	—	— <sup>6</sup>	—	93,487	59 DOD
Pacific Vegetable Oil	1,170,000 (1974-75)	210,317 <sup>2</sup>	—	—	—
Pfizer	262,000 (1972-75)	1,665,458	125	—	—
Phillips Petroleum	1,258,000 —	5,133,557	26	—	—
Pullman	2,275,665 (1973-75)	2,006,977	102	—	—
Republic	—	247,206	563	—	—
Richardson-Merrill	"some payments"	658,691	282	—	—
Rockwell International	676,300 (1971-75)	4,943,400	31	732,306	10 DOD
Rohm and Haas	749,400 (1971-75)	1,046,046	194	21,097	10 ERDA
Rollins	127,000 (1971-75)	193,297 <sup>2</sup>	—	681,619	1 NASA
Sanders Associates	"some commissions"	180,302	673	—	—
Santa Fe International	66,140 (1972-75)	255,912 <sup>2</sup>	—	141,142	45 DOD
Schiering-Plough	207,000 annually	793,275	247	—	—
G.D. Searle & Co.	1,303,000 (1973-75)	711,800	268	—	—
Smith International	13,349 —	292,683	508	—	—
Standard Oil of Indiana	1,359,400 (1970-75)	9,955,248	12	112,284	50 DOD
Stanley Home Products	50,000 —	187,612	657	—	—
Sterling Drug	136,000 (1970-75)	957,146	212	—	—
Sybron	76,500 (1974-75)	557,740	310	—	—
Tenneco	865,480 —	5,599,709	22	—	—
UOP	290,000 (1971-75)	615,046 <sup>2</sup>	—	241,732	28 DOD
United Brands	2,000,000 —	2,186,525	94	—	—
United Technologies	2,040,000 (1973-75)	3,877,772	40	1,407,447	3 DOD
Upjohn	2,736,000 —	890,771	223	36,230	11 NASA
Warner-Lambert	2,273,700 (1971-75)	2,172,271	95	—	—
Westinghouse Electric	223,000 —	5,862,747	20	—	—
White Consolidated Industries	1,190,000 (1974-75)	1,229,852	168	314,515	21 DOD
Whitaker	133,425 (1970-71)	712,562	267	33,662	6 ERDA
				6,845	35 NASA

1. Company reported that alleged improper payments were under investigation by government agency or by company.

2. Company is not listed on Fortune 1,000 list. Figure is that listed in SEC report as "Total revenues fiscal year 1974 (in thousands)."

3. Company's report to SEC did not identify payment as either domestic or foreign.

4. Company is not listed on Fortune 1,000 list. SEC report lists "negative revenues" in fiscal 1974.

5. In addition to \$25-million in payments to foreign government officials in Japan, Italy and elsewhere, the SEC alleged that Lockheed disbursed more than \$200-million to consultants and commission agents without adequate records and controls to ensure that the services paid for were actually rendered.

6. Company is not listed on Fortune 1,000 list because of its purchase during 1975 by another company on the list. Standard & Poors reported sales of more than \$1.11-billion for the company in 1975.

**Foreign Policy/National Security - 4**

On Feb. 4, 1976, the subcommittee set in motion the realization of its own prophecy the previous May when it released documents revealing payments by Lockheed of \$12.6-million to Japanese interests, including \$7-million to right-wing leader Yoshio Kodama, who was closely associated with the ruling Liberal-Democratic Party. The disclosure touched off a political firestorm in Japan that had not yet abated when, on Aug. 16, former Prime Minister Kakuei Tanaka was indicted on charges of accepting \$1.7-million from Lockheed.

Lockheed's involvement in the bribery scandal triggered a second Senate investigation by the Banking Committee concerning its oversight responsibility for the \$250-million loan guarantee that Congress had voted for the financially strapped aerospace giant in 1971. Banking Committee Chairman Proxmire, who had opposed the loan guarantee, charged in a series of hearings beginning Aug. 25, 1975, that Lockheed was withholding information which the committee and the SEC had a right to see. (*Congressional probes. Weekly Report p. 471; Lockheed loan, 1971 Almanac p. 152*)

On March 12, 1976, Proxmire introduced S 3133 to outlaw overseas corporate bribes. After the proposal drew opposition from the administration and the SEC, the Banking Committee drew up a modified version (S 3664), which was reported July 2. (*Proxmire bill, Weekly Report p. 969*)

**Earlier Congressional Action**

Two major legislative steps aimed at overseas corporate bribes already have been taken in 1976:

- The fiscal 1976-77 foreign aid bill (HR 13680—PL 94-329) required disclosure to the Secretary of State, and through him to Congress, of "political contributions, gifts, commissions and fees paid, offered, or agreed to be paid" in connection with the overseas sale of any armaments.

When the fee disclosure provision was incorporated in the original version of that legislation (S 2662), the aerospace industry and the Pentagon warned that it would cut U.S. exports of arms and aircraft by 50 to 70 per cent annually. President Ford vetoed S 2662 because of other provisions of the bill, and the fee-disclosure requirement was retained in the new version (HR 13680), which was cleared by Congress June 25, 1976, and signed by the President June 30.

- The Tax Reform Act of 1976 (HR 10612) as reported by the Senate Finance Committee incorporated an amendment sponsored by Harry F. Byrd Jr. (Ind Va.) that would deny U.S. corporations three major tax benefits on any earnings produced by foreign bribes: 1) the tax credit for foreign taxes paid, 2) deferral of tax payments on earnings by foreign subsidiaries, and 3) benefits from Domestic International Sales Corporations (DISCs).

The Byrd amendment would require taxpayers to report to the Secretary of the Treasury any income "which is derived directly or indirectly, in whole or in part, as the result of the making of an illegal bribe, kickback or other unlawful payment" to a foreign official. The Senate July 26 approved a package of committee amendments to the bill, including the bribery provisions, by a roll-call vote of 86-1. (*Vote 411, Weekly Report p. 2095*).

**Proxmire Measure**

Proxmire's bill as introduced would have outlawed corporate bribery of foreign officials and empowered the SEC to bring criminal actions against violators. It would have re-

quired firms to keep accurate books that were to be subject to inspection by the SEC and would have required periodic disclosure of all payments to foreign officials in excess of \$1,000.

In testimony before the Banking Committee in April, Commerce Secretary Richardson and Treasury Secretary William E. Simon warned that S 3133 was premature and could put U.S. firms at a competitive disadvantage in overseas markets. They insisted that the problem of international corporate bribery required a multilateral remedy and urged the panel to await the recommendations of a White House task force established March 31 under Richardson's chairmanship.

In its May 12 report to the banking panel, the SEC proposed a substitute measure (S 3418) requiring companies to keep accurate books and records and make it illegal for corporate officials to mislead outside auditors. The commission said that outright prohibition of foreign bribes should be considered as a major policy question, separate from the issue of tightening the federal securities laws that the SEC enforces. It said that a legal requirement that companies report all payments over \$1,000 would "deny the commission the necessary flexibility" to deal with the circumstances of particular cases.

SEC Chairman Roderick M. Hills told the Banking Committee May 18 that by requiring the commission to enforce a bribery ban and a fee-reporting requirement, S 3133 threatened to distort the SEC's role which, he insisted, was to protect the interests of investors. The SEC was not competent "to say whether or not we can or should enforce the laws for the rest of the world," he said.

The Banking Committee then drafted S 3664, which was ordered reported June 22. It incorporated the accounting requirements of the SEC bill, but also adopted Proxmire's language prohibiting any payment to a foreign official intended to assist the briber in "obtaining or retaining business for or with, or directing business to, any person, or influencing legislation or regulations" of a foreign government. In its report (S Rept 94-1031) on S 3664, the committee said the prohibition was worded to exclude from coverage "grease payments"—small gratuities paid to expedite the performance of routine functions such as the placement of a long-distance phone call, clearance through customs, or the issuance of required permits. The new version did not include the disclosure requirements in Proxmire's original bill.

**Administration Position**

In response to the furor caused by disclosure of Lockheed's payments to Japanese businessmen, President Ford Feb. 10 ordered a White House review of the problem of questionable overseas payments by U.S. firms. On March 31 he appointed a Cabinet-level panel of 10 members, under Richardson's chairmanship, to "conduct a sweeping policy review of this matter and to recommend such additional policy steps as may be warranted."

A difference between the President's and Proxmire's approach was suggested by the fact that nowhere in his announcement of the panel's establishment did the President refer to "bribes." References even in the panel's title were to "questionable payments." "From the facts at hand," Ford said, "it is not clear to me where true justice lies in this matter."

A White House fact sheet that accompanied the President's announcement warned of the "complexities of the foreign payments issue and stressed that remedial steps

could be taken only after careful consideration. The fact sheet warned that a unilateral prohibition on payments by U.S. corporations could place the companies in a "disadvantageous position."

The President's task force submitted its first legislative proposal to Congress on Aug. 3 (S 3741; HR 15149). It required U.S. businesses to report to the Secretary of Commerce, subject to his guidelines, payments made "in connection with an official action, or sale to or contract with a foreign government, for...commercial benefit." The reports were to be transmitted promptly to the Departments of State and Justice, the Internal Revenue Service, and, if the reporting procedure were regulated by the SEC, to that agency. The report also would be transmitted on request to congressional committees having jurisdiction over the subject of the report, "subject to an appropriate arrangement to assure its confidentiality."

A report would have to be made public one year after its receipt "unless the Secretary of State makes a specific determination in writing that foreign policy interests dictate against disclosure, or unless the Attorney General makes a specific determination in writing that the status of an ongoing investigation or prosecution dictates against public disclosure."

The bill also would empower the Secretary of Commerce to promulgate regulations to ensure that corporate bookkeeping facilitated corporate compliance with the reporting requirements.

### Major Issues

Debate on S 3664 is likely to touch on three issues:

- the necessity of any new legislation on overseas payments;
- the limits on public disclosure of payments;
- the wisdom of outlawing foreign bribery.

Some opponents of the Proxmire bill maintained that if U.S. firms were forbidden to make such payments—which were customary in some countries—they would be placed at a severe competitive disadvantage to non-U.S. firms that were under no such limitation. Reporting on a survey of U.S. business leaders, a business policy research group quoted anonymously the vice president of a U.S. rubber company: "Certain payments to government officials are quite common and are an accepted method of doing business in many part of the world.... The fact is that if you are going to do business in those countries and remain competitive some such payments must be made."

Senior Ford administration officials, while strongly condemning corrupt corporate practices, have warned that unilateral U.S. action might also have undesirable political repercussions abroad: "Public discussion in this country of the alleged misdeeds of officials of foreign governments cannot fail to damage our relations with these governments," Deputy Secretary of State Robert S. Ingersoll told the Joint Economic Committee in March. He said the results of the Lockheed revelations were: "Political crises in friendly countries, possible cancellation of major overseas orders for U.S. industries, and the risk of a general cooling toward U.S. firms abroad."

Supporters of anti-bribery legislation dismissed the argument that bribery was a practical necessity, citing numerous U.S. firms that successfully refused to take such action. Proxmire rejected the argument that unilateral U.S. action against payments by U.S. firms would place them at a competitive disadvantage with non-U.S. business: "Most

of the foreign bribes revealed thus far," he said during an April 7 hearing of the Banking Committee, "involved American companies competing with American companies for the same business."

Former Under Secretary of State George W. Ball told the same hearing that a hard U.S. line against corporate bribery would yield dividends in the international ideological competition with the Soviet Union: "When our enterprises stoop to bribery and kickbacks," he said, "they give substance to the Communist myth...that capitalism is fundamentally corrupt."

The Banking Committee, in its report on S 3664, also argued that U.S. acquiescence in overseas bribery "undermines the foreign policy objective of the United States to promote democratically accountable governments and professionalized civil services in developing countries."

**Delay in Disclosure.** The reports required by the administration bill would be kept confidential for one year after receipt to protect any proprietary business information they contained and to lessen possible foreign relations problems that might be created by disclosure. The reports could be kept secret indefinitely upon written certification by the Secretary of Defense or the Attorney General.

It was these features of the bill that Jimmy Carter branded a coverup. And supporters of the Proxmire bill charged that the administration bill would be vitiated by these provisions. They maintained that the State Department was too concerned with the diplomatic fallout of any disclosure. They maintained that the department had been reluctant to support disclosure of information about Lockheed's Japanese payments.

When Richardson explained the administration bill Aug. 3, the administration had not agreed on a procedure for handling payment-reports that had been kept confidential. An aide to Richardson told reporters that the Commerce Secretary hoped that, in such cases, a public statement would be made that a report had been suppressed. The press inquiries thus provoked, together with the right of congressional committees to review the report, would, said the aide, "deter the Secretary of State from wantonly exercising his authority."

**Outlaw Bribery?** In its report on the Proxmire proposal, the Banking Committee cited with approval the judgment of Ford's task force that direct criminal prohibition of overseas bribes "would represent the most forceful possible rhetorical assertion...of our abhorrence of such conduct. It would place business executives on clear and unequivocal notice that such practices should stop. It would make it easier for some corporations to resist pressures to make questionable payments."

Supporters of the Proxmire approach also denied that a prohibition of bribery would be any more difficult to enforce than a requirement that corporations report all overseas payments. To enforce a reporting requirement, insisted the Banking panel, "it would be necessary to prove that the undisclosed payment was actually made, and that it was made with an improper purpose."

But administration supporters insisted that enforcement of a law making overseas bribes a crime would be difficult if not impossible. According to a White House statement in support of the administration bill, "successful prosecution of offenses [against a prohibition statute]...would typically depend upon access to witnesses and information beyond the reach of the U.S. judicial process."

—By Pat Towell